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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term 1976

No. 75-1797

COMMISSIONERS OF ELECTION OF UNION COUNTY, et al.,

Petitioners,

versus

ROBERT LYTLE,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI

DAVID ROSS CLARKE
P. O. Box 187
Mauldin, South Carolina 29662
Attorney for Respondent

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The writ of certiorari should be denied because no issue worthy of review is presented by this case.

The case involves an award of attorneys' fees under the 1975 Voting Rights Act amendments, 42 U.S.C. § 1973 1(e). No question is raised of general importance to the administration of the Act, which has now been applied, consistently, by three circuits; the instant case (fourth circuit); *Torres v. Sachs*, —— F.2d —— (2d Cir. Jun. 25, 1976) (second circuit); and *Ferguson v. Winn Parish Police Jury*, 528 F.2d 592 (5th Cir. 1976) (Fifth Circuit). See also, *Wallace v. House*, 48 L.Ed. 191 (1976), in which a lower court judgment denying attorneys' fees in a voting case was vacated by this Court and remanded for reconsideration in light of the 1975 Voting Rights Act amendments.

The excruciatingly detailed description of the facts in the petition makes it clear that the petitioners simply have a quarrel with the outcome of this particular case and the way in which the court exercised its discretion. Specifically, the petitioners, who were defendants in a county reapportionment case, suffered an adverse judgment, which they allowed to become final. Thereafter, the district court awarded attorneys' fees to the plaintiffs as prevailing parties. The petitioners now seek to relitigate the reapportionment case on the merits to show that if they had not allowed the judgment to become final they would have been vindicated by a subsequent holding of this Court, and the plaintiffs would thus have ceased to be the prevailing parties.

The judgment on the merits of the county reapportionment case — which the petitioners now believe they should have won — was never set aside or modified. Despite the petitioners' statement that "after May 19, 1975, the petitioners on the record in this case would be entitled at any time to return to their prior reapportionment scheme," Petition, p. 7, they never made any effort (by motion or by new legislation) to restore the prior reapportionment scheme" or to undo the judgment which they now claim in retrospect they should have won. In short, the petitioners not only wish to change a judgment that they allowed to become final, but they wish to change it by a collateral attack.

But cases must come to an end and we all know cases which, in retrospect, we believe we could have won had we just taken another appeal or had the decision just come down a few days or weeks later. In *Class v. Norton*, 505 F.2d 123 (2d Cir. 1975), Connecticut claimed that a new decision of this Court should allow it to reopen an earlier order (requiring it to make certain payments) which it had allowed to become final. The second circuit said:

> "The efficient and fair administration of justice requires that litigation of an issue at some point comes to an end. And for the appellant, who has had one opportunity already to contest the payment order, the time to relitigate that issue has necessarily run." 505 F.2d at 125.

This unexceptionable principle was correctly applied by the fourth circuit in this case, in a unanimous decision by Judges Winter, Craven, and Widener. The appellees have had their opportunity to persuade three judges that in the specific circumstances of this particular case, the attorneys' fee award of $5000 should be set aside.* There is no issue in this case which would warrant requiring this Court to exercise its discretionary jurisdiction to review a case which was decided correctly and which is so devoid of general importance.

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

Davis Ross Clarke
P. O. Box 187
Mauldin, South Carolina 29662
Attorney for Respondent.

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*Petitioners also quarrel with the fee award because of the defendants' official status. This case, of course, involves only a county redistricting, so eleventh amendment questions are wholly inapplicable. This Court has awarded and approved awards of attorneys' fees in situations just like this. *Bradley v. School Board*, 416 U.S. 696 (1974); *Northcross v. Board of Education*, 412 U.S. 427 (1973), and has awarded other taxable costs against local officials in hundreds of other cases. Moreover, Congress made its intentions on this point perfectly clear when it authorized attorneys' fees in voting cases:

> "As with cases brought under 20 U.S.C. § 1617, the Emergency School Aid Act of 1972, defendants in these cases are frequently state or local bodies of state or local officials. In such cases it is intended that the attorneys' fees, like other items of costs, will be collected either from the official directly, from funds of his agency or under his control, or from the State or local government (whether or not the agency or government is a named party)." S.Rep. No. 94-295, 94th Cong. Ist Sess. 41 (1975), reprinted at 1975 U.S. Code Cong. & Adm. News 1492.